

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Petition for Rulemaking	)	
of Pacific Bell Mobile Services	)	RM-8643
Regarding a Plan for Sharing	)	
the Costs of Microwave Relocation	)	

**REPLY COMMENTS OF  
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association (PCIA) hereby submits its reply to comments on the Petition for Rulemaking filed by Pacific Bell Mobile Services (Pacific Bell).<sup>1</sup> The record demonstrates overwhelming support among both PCS providers and the microwave industry for the establishment of a cost sharing mechanism which would facilitate the transition of the 2 GHz band from fixed microwave use to PCS. In fact, many major PCS providers commenting on the petition support the consensus proposal submitted by PCIA, Pacific Bell, and others in their joint opening comments.<sup>2</sup> Accordingly, PCIA urges the Commission to promptly initiate a rulemaking and adopt a cost sharing plan based on the principles recommended by PCIA.

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<sup>1</sup> Petition for Rulemaking of Pacific Bell Mobile Services, RM-8643 (filed May 5, 1995) [hereinafter "Pacific Bell Petition"].

<sup>2</sup> Comments of the Personal Communications Industry Association, RM-8643 (filed June 15, 1995) [hereinafter "PCIA Comments"].

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## **I. INTRODUCTION AND SUMMARY**

In their comments on the Pacific Bell Petition, representatives of both the PCS and microwave industries urged adoption of a microwave relocation cost sharing plan. Commenters noted that such a proposal will ensure an equitable allocation of relocation costs as well as improving the efficiency of the transition process. Importantly, most major PCS providers support cost sharing in general and PCIA's consensus proposal in particular. Those supporting the PCIA proposal include: American Personal Communications; Ameritech; BellSouth Wireless, Inc.; Cox Enterprises, Inc.; Omnipoint Communications; Pacific Bell Mobile Services; Sprint Telecommunications; and Western PCS Corporation. These providers recognize that the PCIA plan strikes the correct balance between fairly allocating microwave relocation costs and taking advantage of the efficiencies a mandatory cost sharing program will produce.

As PCS licensees move closer to the deployment of their systems and the need to begin microwave relocations grows, it is of critical importance that the Commission adopt a mandatory cost sharing plan. This will remove disincentives for PCS providers to relocate promptly the incumbents in their own service areas to negotiate the relocation of microwave system links outside those areas. Allowing such disincentives to remain will only slow the deployment of PCS systems and make the transition process more difficult for microwave incumbents. The Commission must act quickly to ensure the success of a cost sharing plan in facilitating the delivery of PCS services to the public.

Although all commenters supported the adoption of a cost sharing plan, several parties demonstrated an apparent misunderstanding of the PCIA proposal. In particular, a number of commenters expressed concern that PCIA's proposed cost sharing cap was a limit on the costs that could be paid to incumbents. However, the cap is only a limit on costs eligible for sharing. Others incorrectly suggested that the premiums paid in addition to the actual costs of relocation would be eligible for reimbursement. In fact, only the actual relocation costs of a comparable system as authorized by the FCC in the transition rules are to be included in the cost sharing calculation. Any premium paid to the incumbent for an early relocation must be absorbed by the relocating PCS provider.

**II. PCIA HAS NOT PROPOSED TO CAP RELOCATION  
COST COMPENSATION OR TO REQUIRE THE  
SHARING OF ANY PREMIUM PAYMENTS**

Notwithstanding the overwhelming support expressed for a cost sharing plan, several of the comments filed with the Commission reveal a misunderstanding of the proposal. PCIA believes that a clear understanding of its plan will alleviate the few substantive reservations expressed by microwave incumbents and PCS providers.

**A. The Cost Sharing Cap Proposed by PCIA Is a Limit on the Costs That are Eligible To Be Shared among Relocating PCS Providers, Not a Limit on the Payments to Microwave Licensees**

Several microwave incumbents who filed comments on Pacific Bell's Petition expressed concern that the cap on the costs subject to sharing among PCS providers would also cap the amount that could be paid to a microwave licensee for the replacement of its link. To the contrary, the cap is only a limit on the costs on which a PCS provider can seek reimbursement, absent an agreement to the contrary, not on the amount which a PCS provider may have to pay to relocate a particular microwave incumbent. Under the Commission's transition rules, microwave licensees remain entitled under the rules to full cost compensation for their system and comparable alternative facilities.<sup>3</sup> PCIA's proposed cost sharing plan does not affect these requirements. Consequently, no ratepayers will be required to bear "'uncompensated' costs,"<sup>4</sup> and incumbents will not be denied any necessary multiple hops or other comparable facilities<sup>5</sup> as a result of the cap.

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<sup>3</sup> Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6603 ¶ 36 (1993).

<sup>4</sup> Comments of Metropolitan Water District of Southern California, RM-8643 at 2-6 (filed June 15, 1995) (expressing concern that the costs of relocating microwave systems in rural desert terrain and highly-sensitive environmental areas may be higher than the cap).

<sup>5</sup> See Comments of the Association of American Railroads, RM-8643 at 6-8 (filed June 15, 1995) (stating that relocation of microwave links may cost more than the cap because a larger number of hops are often required at higher frequencies and other more expensive mediums, such as fiber optic lines, may be necessary).

The \$250,000 cap (plus an additional \$150,000 if a new tower is required) on reimbursable costs is not arbitrary, but was intentionally set at a level well above with the record evidence of the average costs of relocating microwave systems. At the same time, it is designed to protect PCS providers who enter the market later and who have no opportunity to participate in the relocation negotiations. This cap and the right to deferred payments are particularly important to ensure that designated entity PCS licensees and UTAM, Inc. (the unlicensed PCS frequency coordinator) are not forced to pay excessive relocation costs since they will likely have limited funds available.

PCIA fully understands that, in some cases, a PCS provider may have to pay more than \$250,000 (plus \$150,000 if a new tower is required) to relocate a specific link. However, the number of times this is likely to occur is small since the \$250,000 (plus \$150,000 if a new tower is required) cap suggested by PCIA is well above the FCC's own estimate of 2 GHz relocation costs and, in any event, total aggregate costs for relocation will be offset by a similar number of instances of below cap relocations. In addition, PCS providers remain free and are encouraged to negotiate a sharing arrangement tailored to the individual circumstances of a particular link or system prior to a relocation. But some situations may still remain in which a PCS provider will be responsible for actual relocation costs above the amount of the cap for the relocation of a particular link. PCIA nonetheless believes that this "rough justice" is required to protect later market entrants.

**B. Any Premiums Over the Actual Costs of Relocation Are Not Appropriate for Inclusion in Mandatory Cost Sharing**

PCIA has proposed sharing of only actual microwave relocation costs.<sup>6</sup> It follows that any amount paid by a PCS provider to a microwave licensee above the actual costs of a comparable system must be absorbed by the relocating entity. For example, a PCS provider may require the early relocation of a microwave link and agree to pay the licensee an additional sum in excess of actual relocation costs so that the licensee will relocate on an expedited schedule. This premium over cost should be absorbed by the relocating entity because it will be the principal beneficiary of the early relocation. Later market entrants will only be required to share the actual costs required to relocate the link.

PCIA remains concerned that some microwave industry incumbents do not fully understand the 2 GHz transition rules established by the FCC. Those transition rules were adopted to ensure that existing incumbents in the band do not suffer adverse consequences from the reallocation of the spectrum to PCS. After careful study, the Commission set up detailed rules which state that microwave incumbents are entitled to "comparable facilities [that] must be equal to or superior to existing facilities."<sup>7</sup> PCIA strongly supports these requirements.

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<sup>6</sup> PCIA Comments at 15-16.

<sup>7</sup> Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd at 6603 ¶ 36.

Nonetheless, some microwave licensees have asserted in their comments that they are entitled to the "fair market value" of their licenses.<sup>8</sup> However, there is no relevant, competitive market for these microwave facilities in which such "fair market value" can be determined. Instead, there are the FCC transition rules, which are intended to substitute for such a market. It would frustrate this clear FCC policy to permit incumbents themselves to take advantage of these protections by extracting unreasonable concessions from PCS licensees over and above the costs of comparable replacement facilities.

### **III. PROMPT FCC ACTION TO PROMULGATE COST SHARING REQUIREMENTS**

Given the importance of cost sharing to the successful transition of the 2 GHz band to PCS and the broad support for the PCIA proposal, the Commission should move expeditiously to open and complete a proceeding to adopt cost sharing rules. All of the substantive concerns of the commenting parties herein have now been appropriately resolved. The initial PCS licensees have already invested enormous sums and must move quickly to construct their systems. The public as well should not be denied the early implementation of these important new services. Accordingly, the existing disincentives to the efficient conduct of the microwave relocation process should be removed by the establishment of cost sharing requirements and parties should

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<sup>8</sup> See Comments of City of San Diego, RM-8653 at 5-8 (filed June 15, 1995); Comments of UTC, RM-8643 at 6 (filed June 15, 1995).

be encouraged to focus their efforts on the earliest possible delivery of service in the public interest.

#### IV. CONCLUSION

PCIA believes that its cost sharing proposal is the best mechanism for fairly allocating the costs of microwave relocation while protecting the interests of both microwave incumbents and PCS providers. The FCC should act swiftly to initiate a rulemaking and adopt regulations which will speed the delivery of PCS to the public.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS  
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June 30, 1995



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I hereby certify that on this 30th day of June, 1995, I caused copies of the foregoing **"Reply Comments of the Personal Communications Industry Association"** to be sent via first-class mail to the following:

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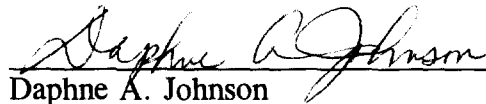
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